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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,271	11/30/2001	Stefan Nordhoff	32301W244	2598

441 7590 09/15/2003

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WASHINGTON, DC 20036

EXAMINER

WRIGHT, WILLIAM G

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/997,271

Applicant(s)

NORDHOFF ET AL.

Examiner

William G. Wright SR.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-19, drawn to a process for the continuous preparation of concentrated hydrogen peroxide by suspension crystallization, classified in Class 23, subclass 295R.

II. Claims 20 and 21, drawn to hydrogen peroxide of a concentration of from 99.9 to 100 weight percent, and a use for the hydrogen peroxide as an oxidizing agent, classified in Class 423, subclass 584.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case a materially different hydrogen peroxide of less than 99.9 weight percent purity may be made by the claimed method.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of

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their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Robert G. Weilacker on September 2, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20 and 21 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that

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the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over British reference Geoffrey et al., 889,421.

Geoffrey teaches a process for purifying hydrogen peroxide by way of crystallization at reduced temperature. The reference teaches the feature of countercurrent washing using hydrogen peroxide liquid and the application of the freezing and washing technique. The fraction of the feed converted to solid 100% hydrogen peroxide is 0.230 by weight, this teaching is found in

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page 11 Example 2. Example 6 of page 12 teaches a conversion of 0.377 by weight.

Geoffrey fails to teach the higher starting concentration of 85 to 95 weight percent found in the instant claimed invention. The reference also fails to teach the particular type of crystallizer of the instant claims, this being single-or multi-stage scraper-type crystallizers. The specific nucleation temperature taught in the instant claims of 0 to 5K, below the equilibrium temperature of the hydrogen peroxide starting material, and the temperature being lowered further until a suspension density in the range of 5 to 80% is achieved is not taught. The further teaching of using the specific stabilizers of the instant claims is not taught as well.

The higher starting concentration, type of crystallizer, nucleation temperature and the production of suspension density are all expedients permitted a practitioner. One skilled in the art would apply these parameters to arrive at the instant claimed invention. The use of stabilizers is also an obvious expedient allowed a practitioner and the exact stabilizer is a decision left to the practitioner. The motivation to use known stabilizers along with known crystallizers and known physical parameters is obvious and would be expected to be useful for their known functions.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William G. Wright, Sr. whose telephone number is (703) 305-7792. The examiner can normally be reached on Monday through Thursday from 6:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on (703) 308-3837. The fax phone number for the organization where this application or proceeding is assigned are (703) 872-9306 for the regular communications and (703) 872-9311 for after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1495.

  
W. G. Wright, Sr.:cdc

September 3, 2003

  
WAYNE A. LANGEL  
PRIMARY EXAMINER